

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GEOMATRIX, LLC,

Plaintiff,

Case No. 3:20-cv-13331

v.

District Judge Robert H. Cleland
Magistrate Judge R. Steven Whalen

NSF INTERNATIONAL,
BIOMICROBICS, INC.,
HOOT SYSTEMS, LLC,
and JAMES BELL,

Defendants.

**PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANT,
NSF INTERNATIONAL'S, MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(1) and (6)**

TABLE OF AUTHORITIES

Cases

<i>Hartman v. Register</i> , No. 1:06-cv-33, 2007 WL 915193, at *5 (S.D. Ohio Mar. 26, 2007)	1, 2
<i>Lowery v. Ala. Power Co.</i> , 483 F.3d 1184.....	1
<i>Manasher v. NECC Telecom</i> , 2006 WL 3543639 (E.D. Mich. December 8, 2006).....	2
<i>Merritt v. Fogel</i> , 349 F. App'x 742 (3rd Cir. 2009).....	1
<i>Nat'l City Mortgage Co. v. Navarro</i> , 220 F.R.D. 102 (D.D.C. 2004).....	2
<i>Pure Country, Inc. v. Sigma Chi Fraternity</i> , 312 F.3d 952 (8th Cir. 2002)	1, 2
<i>Snyder v. Pascack Valley Hosp.</i> , 303 F.3d 271 (3d Cir. 2002)	1
<i>Ultravision Techs. v. Eaton Corp.</i> , Civil Action No. 2:19-CV-00290-JRG, (E.D. Tex. Nov. 7, 2019)	2
<i>Washer v. Bullitt County</i> , 110 U.S. 558 (1884)	1

Other Authorities

6 Fed. Prac. & Proc. 2d §1476	1
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BRIEF IN RESPONSE

The Motion to Dismiss filed by Defendant, NSF International (ECF No. 18) has been mooted by Plaintiff's First Amended Complaint, filed on May 10, 2021. The First Amended Complaint supersedes and replaces the original Complaint. *Washer v. Bullitt County*, 110 U.S. 558, 562 (1884) ("When a petition is amended by leave of the court, the cause proceeds on the amended petition."); *Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 276 (3d Cir. 2002) ("An amended complaint supersedes the original version in providing the blueprint for the future course of the lawsuit."); 6 Fed. Prac. & Proc. 2d §1476 ("Once an amended pleading is interposed, the original pleading no longer performs any function in the case."). *See also Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1219 (11th Cir. 2007) ("[A]n amended complaint supersedes the initial complaint and becomes the operative pleading in the case."); *Hartman v. Register*, No. 1:06-cv-33, 2007 WL 915193, at *5 (S.D. Ohio Mar. 26, 2007) ("Once an amended pleading is filed, the original pleading no longer performs any function in the case.")

Plaintiff's filing of its First Amended Complaint thus renders Defendant's Motion to Dismiss moot, as it is directed at a pleading that is no longer operative:

[T]he consensus from the Circuit Courts of Appeal, hold that an amended complaint nullifies the original complaint, and thus moots a motion to dismiss addressed to that nullity. *See, e.g., id.* n.4; *Merritt v. Fogel*, 349 F. App'x 742, 745 (3rd Cir. 2009) ("[T]he filing of [an] amended complaint . . . would have rendered moot defendants' motion to dismiss."); *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952,

956 (8th Cir. 2002) (“Pure Country's motion to amend the complaint rendered moot Sigma Chi's motion to dismiss the original complaint.”).

Ultravision Techs. v. Eaton Corp., Civil Action No. 2:19-CV-00290-JRG, (E.D. Tex. Nov. 7, 2019) (some citations omitted). *See also Hartman, supra*, 2007 WL 915193, at *6 (defendants’ motions to dismiss the original complaint and the amended complaint were moot given the subsequent filing of a second amended complaint); *Nat’l City Mortgage Co. v. Navarro*, 220 F.R.D. 102 (D.D.C. 2004); *Manasher v. NECC Telecom*, 2006 WL 3543639 (E.D. Mich. December 8, 2006).

Plaintiff’s First Amended Complaint addresses the issues raised in Defendant’s Motion to Dismiss by, among other things, removing its claim under Section 2 of the Sherman Act and clarifying the facts in support of antitrust conspiracy, market injury, and fraud and misrepresentation.

Respectfully submitted,

THE MILLER LAW FIRM, P.C.

/s/ E. Powell Miller

E. Powell Miller (P39487)

Kevin F. O’Shea (P40586)

950 West University Drive

Rochester, MI 48307

(248) 841-2200

kfo@millerlawpc.com

dlr@millerlawpc.com

Attorneys for Plaintiff

Dated: May 10, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, I electronically filed the foregoing papers using the ECF system which will send electronic notices of same to all counsel of record.

/s/ E. Powell Miller

E. Powell Miller (P39487)

Kevin F. O'Shea (P40586)

Daniel L. Ravitz (P83031)

950 West University Drive

Rochester, MI 48307

(248) 841-2200

kfo@millerlawpc.com

dlr@millerlawpc.com

Attorneys for Plaintiffs